

1 Kai Tseng (State Bar No. 193756)
ktseng@orrick.com
2 ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
3 Menlo Park, CA 94025-1015
Telephone: (650) 614-7400
4 Facsimile: (650) 614-7401

5 James C. Brooks (State Bar No. 129680)
jbrooks@orrick.com
6 ORRICK, HERRINGTON & SUTCLIFFE LLP
777 South Figueroa Street, Suite 3200
7 Los Angeles, CA 90017-5855
Telephone: (213) 629-2020
8 Facsimile: (213) 629-2499

9 Donald E. Daybell (State Bar No. 210961)
ddaybell@orrick.com

10 Mark J. Shean (State Bar No. 217671)
mshean@orrick.com
11 ORRICK, HERRINGTON & SUTCLIFFE LLP
4 Park Plaza, Suite 1600
12 Irvine, CA 92614-2558
Telephone: (949) 567-6700
13 Facsimile: (949) 567-6710

14 Attorneys for Defendant
AXURE SOFTWARE SOLUTIONS, INC.

15
16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA
18 WESTERN DIVISION
19

20 IRISE, a California corporation,

21 Plaintiff,

22 v.

23 AXURE SOFTWARE SOLUTIONS,
24 INC, a California corporation; and
INTEGRATED ELECTRICAL
25 SERVICES, INC., a Delaware
corporation,

26 Defendants.

27 AND RELATED COUNTERCLAIMS.
28

Case No.: 2:08-cv-03601 SJO (JWJx)

**AXURE'S EX PARTE
APPLICATION TO DEEM
AXURE'S MOTION FOR
SUMMARY JUDGMENT TIMELY
FILED**

Date: July 6, 2009
Time: 10:00 a.m.
Courtroom: Hon. S. James Otero

Pre-Trial Conf: September 21, 2009
Trial Date: September 29, 2009

1 Axure Software Solutions, Inc. (“Axure”) hereby moves *ex parte* for an order
2 from the Court that the summary judgment documents filed on the public record by
3 Axure at 4:33 p.m. on June 15, 2009 be treated as timely filed on the June 15, 2009.

4 The Court’s Scheduling Order in this matter set June 15, 2009 as the deadline
5 for the filing of opening summary judgment briefs. The Court further set a deadline
6 of 4 p.m. for all electronic filings.

7 Axure prepared a motion for summary judgment of non-infringement and
8 invalidity of Plaintiff iRise’s U.S. Patent No. 7,349,837. Documents supporting
9 Axure’s summary judgment motion included pleadings and exhibits to be filed on
10 the public record, together with exhibits to be filed under seal. Axure’s under-seal
11 exhibits were lodged with the Clerk’s office prior to 4:00 p.m. on June 15th. (*See,*
12 *Declaration Of Amy Maruska In Support Of Axure’s Ex Parte Application To Deem*
13 *Axure’s Motion For Summary Judgment Timely Filed*, hereinafter “*Maruska*
14 *Declaration*,” ¶ 3.)

15 At approximately 3:45 p.m. on June 15, 2009, counsel for Axure attempted to
16 electronically file the following public pleadings and exhibits in connection with
17 Axure’s summary judgment motion:

- 18 (1) *Axure’s Notice Of Motion And Motion For Summary Judgment Of Non-*
19 *Infringement And Invalidity*;
- 20 (2) *Memorandum Of Points And Authorities In Support Of Axure’s Motion*
21 *For Summary Judgment Of Non-Infringement And Invalidity*;
- 22 (3) *Statement Of Uncontroverted Facts And Conclusions Of Law In Support*
23 *Of Axure’s Motion For Summary Judgment Of Non-Infringement And*
24 *Invalidity*;
- 25 (4) *Declaration Of Victor S. Hsu In Support Of Axure’s Motion For*
26 *Summary Judgment Of Non-Infringement And Invalidity*, including
27 Exhibits B-H and N-P;
- 28

1 (5) *Declaration Of Donald E. Daybell In Support Of Axure's Motion For*
 2 *Summary Judgment Of Non-Infringement And Invalidity*, including
 3 Exhibits 1, 3-5, and 7-19; and

4 (6) Proposed Order.

5 Axure's initial attempt to file the above-referenced documents was rejected
 6 by the Central District's E-Filing ("ECF") system because the size of certain
 7 exhibits exceeded the ECF system's transmission capacity. (*Maruska Declaration*,
 8 ¶ 4.) As the Court will note from the courtesy copies of Axure's summary
 9 judgment pleadings and exhibits served on June 15, 2009 (before 6 p.m., *see*,
 10 *Maruska Declaration*, ¶ 5), some of Axure's exhibits contain color diagrams and
 11 color computer screen shots. These color exhibits, as well as some of the larger
 12 non-color exhibits, created the file size problems encountered by Axure. (*Maruska*
 13 *Declaration*, ¶ 4.) To remedy this situation, several of Axure's exhibits were split
 14 into smaller-sized portions. Axure's public summary judgment pleadings and
 15 exhibits were then re-filed, at approximately 4:30 pm on June 15, 2009. (*Maruska*
 16 *Declaration*, ¶ 4.)

17 Plaintiff iRise was served with copies of Axure's confidential and non-
 18 confidential summary judgment pleadings and exhibits before the close of business
 19 on June 15, 2009. (*Maruska Declaration*, ¶ 5.) Counsel for iRise has advised that
 20 iRise does not oppose Axure's *ex parte* application.

21 Dated: June 16, 2009

Respectfully submitted,

ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/ James C. Brooks

James C. Brooks

Attorneys for Defendant
 Axure Software Solutions, Inc.